TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~265~~ 38

MARCOS RADICH, PLAINTIFF IN ERROR,

vs.

WILLIAM J. HUTCHINS AND CLINTON G. WELLS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED JANUARY 11, 1875.

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1 In the circuit court of the United States for the eastern district of Texas.

MARCOS RADICH
v.
WILLIAM J. HUTCHINS & CLINTON G. WELLS. } Law. No. 61.

Be it remembered that, at a term of said court, begun and held at the court rooms thereof, in the city of Galveston, on the first Monday of December, A. D. 1872, it being a regular term of said court, there came on to be heard on a day of said term, to wit, on the 28th day of January, A. D. 1873, the above entitled and numbered cause, in which said cause a final judgment was on said last-named day rendered in the said court; and the plaintiff having prosecuted a writ of error to the Supreme Court of the United States, from the judgment of said circuit court, the record and proceedings in said circuit court, in said cause, are here set out in words and figures following, to wit:

2 *Petition.—Filed April 6th, 1867.*

In the circuit court of the United States for the fifth circuit and eastern district of Texas, sitting in and for said district, at Galveston.

To th' hon. the judges of the said court:

The petition of Marcus Radiche, who is a subject of the Emperor of Russia, residing in the city of Houston, county of Harris, and State of Texas, complaining against William J. Hutchins, a citizen of the State of Texas, residing in the same city of Houston, county of Harris, and State of Texas, and against Clinton G. Wells, also a citizen of the State of Texas, residing in the city and county of Galveston, in the State of Texas aforesaid, and who are hereinafter styled the defendants, respectfully shows unto your honors, that, heretofore, to wit, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-four, and before that time, at the city of Houston, in the eastern district of Texas aforesaid, your petitioner owned and possessed a large quantity of cotton, to wit, four hundred and fifty bales, weighing, to wit, two hundred and twenty thousand pounds, of great value, to wit, of
3 fifty thousand dollars, which he designed to send by wagons and carts to Mexico, and which was then actually in transit, and on its way to the city of Matamoras, in the State of Tamaulipas, in the republic of Mexico; that at the same time, and for a long time previously thereto, the said defendant, William J. Hutchins, claiming and pretending to hold the office and appointment of lieutenant-colonel in th army of the insurgent States, called the Confederate States of America, and to be chief of the cotton-office at the city of Houston aforesaid, combining and confederating with the other defendant, Clinton G. Wells, and with divers other persons, without warrant or authority of any law, by public notice, had prohibited the exportation of cotton from the State of Texas, except upon written permits issued from his office, and that such written permits would not be issued except upon the condition that the person desiring to export or send such cotton beyond the limits of the State of Texas should sell or dispose of to said defendants and their confederates, representing said pretended office, an amount of cotton equal to that for which the permit should issue,
4 at a price nominal and arbitrary, fixed by said office, pretending that such purchase was for the benefit of the said so-called gov-

ernment of the Confederate States of America; or should sell and dispose of to said defendants and their confederates, representing said pretended office, for the use and benefit aforesaid, one moiety or half part of the cotton the trader should desire to export, at the nominal and arbitrary price aforesaid; that is to say, that, as petitioner desired to export and send four hundred and fifty bales of cotton to some point or place in the republic of Mexico, the permit to do so would be issued on his delivering to the said defendants and their confederates an equal quantity of four hundred and fifty bales of cotton, or a permit would be issued to him as aforesaid, for the exportation of two hundred and twenty-five bales of said cotton, upon a surrender of two hundred and twenty-five bales, being one moiety thereof, upon such pretended sale and purchase thereof for the nominal and arbitrary price aforesaid.

That petitioner being desirous to export and sell his cotton aforesaid because of the risk incurred of its destruction or other loss during the internecine difficulties between the Government of the United
5 States and the southern section of the territory thereof, claiming to be and calling itself the Confederate States of America, and knowing that if he, petitioner, should attempt to pass and send his cotton aforesaid beyond the frontier of the State of Texas into Mexico that the armed force of the insurgents, provided and at hand to enforce and carry out the unjust, illegal, and oppressive exactions of the said defendants and their confederates, would take, seize, capture, & confiscate the same, so that petitioner would incur a total loss of property in this particular, your petitioner, acting under the compulsion and coercion of the force and circumstances aforesaid, was compelled to submit for the time, and accordingly did submit, and did deliver, upon such compulsion, to the said defendants and their confederates, two hundred and twenty-five bales of cotton, of great value, to wit, the value of twenty-five thousand dollars, being one moiety or half part of the aforesaid four hundred and fifty bales of cotton, at the nominal and arbitrary price fixed by them as aforesaid, as the consideration for a permit to export over and across the line of the State of Texas into Mexico two
6 hundred and twenty-five bales of cotton, the other moiety of the said four hundred and fifty bales of cotton; but upon the condition insisted upon by your petitioner, that he should have the privilege of redeeming the said two hundred and twenty-five bales of cotton so surrendered by petitioner to said defendants and their confederates, and have permit to export the same by payment of such sum of money as they, the said defendants and their confederates, might demand therefor; and thereupon petitioner delivered and paid to said defendants and their confederates the sum of thirteen thousand three hundred and fifty-seven $\frac{00}{100}$ dollars, in specie and in goods, wares, and merchandise at specie values, in redemption of said two hundred and twenty-five bales of cotton, and for permit to export and send said cotton beyond the limits of the State of Texas to the republic of Mexico. And petitioner alleges and charges that the said sum of thirteen thousand three hundred and fifty-seven $\frac{00}{100}$ dollars was an illegal, wrongful, and oppressive exaction, and was submitted to by petitioner only because of the armed force to support and enforce the same; wherefore he
7 says he is injured and has sustained damage to the value of forty thousand dollars, and therefore he sues, &c.

Wherefore petitioner prays for process to issue against said defendants in due form of law, requiring them to appear and answer the premises; for judgment against said defendants, for his damages aforesaid, and for the costs of his suit, and for such other and further relief

as he may be entitled to under the rules of law; and petitioner, as in duty bound, will ever pray, &c.

L. A. THOMPSON,
Atty. for Pl'ff.

[50c. int. rev. stamp upon original cancelled.]

(Endorsements:)

Filed April 6, 1867.

LEVI JONES, *Clk.*

Citation issued April 8, 1867.

LEVI JONES, *Clerk.*

Alias citation to defendant Wells waived, and appearance entered for him; the other answer to the merits in the cause to stand to Decr. term, 1867.

BALLINGER & JACK,
For Deft. Wells.

MAY 10, 1867.

Citation.—Issued April 8, 1867.

United States circuit court.

8 The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon William J. Hutchins and Clinton G. Wells, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof, to be holden for the fifth judicial circuit, at the court-rooms thereof, in the city of Galveston, on the first Monday of May next, to answer to the petition of Marcus Radiche against them, the said William J. Hutchins and Clinton G. Wells, in an action of damages, of which you will serve the said defendants with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

Witness the honorable John C. Watrous, one of the judges of said court, and the seal thereof, at Galveston, this eighth day of April, in the year of our Lord eighteen hundred and sixty-seven, and of American Independence the ninety-first year.

[SEAL.]

LEVI JONES,
Clerk Circuit Court, E. D. T., G.

Marshal's return.

9 Rec'd in office Apl. 8, '67, and executed April 10, 1867, by handing to the deft., Clinton G. Wells, in person, a copy of this writ and a copy of petition, both certified by the clerk under seal of court.

WM. M. VARNELL, *U. S. M.*,
By NEILL, *Dep.*

Deft. Hutchins not in district.

WM. M. VARNELL, *U. S. M.*

Service on Wells, $2.00; 50 ms. marsh., 3.00.

(Endorsement:) Citation issued April 8, 1867. Levi Jones, clk.

Plea, abatement, demurrer, & answer of deft. C. G. Wells.—Filed May 10, 1867.

In the circuit court of the United States for the eastern district of Texas, at Galveston.

MARCOS RADICHE
v.
WILLIAM J. HUTCHINS & CLINTON G. WELLS.

Now comes the defendant, Clinton G. Wells, and says that he ought not further to answer the plaintiff's suit herein, because he says that no legal or sufficient writ or citation issued in this cause against this defendant. He says that said writ does not bear test of the Chief-
10 Justice of the Supreme Court of the United States, as required by law, but bears test of the Hon. John C. Watrous, judge of this district, and one of the judges of this court; he says further that a writ did not issue to this defendant in this suit, as required by law, and no separate writ issued against this defendant, but that the writ is joint against both defendants; and that there are other objections apparent on the record; all which objections herein made will appear by the record in this cause. Wherefore this defendant prays judgment that said writ or citation be quashed, and that he do not further answer the same.

The said defendant, Clinton G. Wells, further says that he ought not to be compelled to make further answer to this suit, because he says that no sufficient or legal service of the writ or citation in this suit was made on this defendant; said writ purports to be served and executed by Neill, deputy for the marshal of this district, as appears by the record, and the pretended service thereof was in fact made by Andrew Neill; but that said Neill was not at the time of such service, has not been, and is not now a deputy marshal of the United States for
11 this district, and had not at any time taken the oath as such prescribed by law; and this defendant says that said writ or citation was not served or executed on him by any valid, legal, or competent officer; all of which he is ready to verify.

Wherefore, defendant prays judgment of the service of said writ or citation herein and that the same be quashed, and that he do not further answer in this suit.

The matters set forth in the last preceding plea are true in substance and in fact.

And without waiving said pleas in abatement, or either of them, this defendant, further answering plaintiff's petition, says that the same, and the matters and things therein contained, as therein stated and set forth, are not sufficient in law, and he is not bound further to answer the same. Said petition does not set forth or show any legal or sufficient cause of action or suit against defendants or either of them. Wherefore defendant prays judgment, &c.

And for further answer, not waiving any previous plea or his demurrer, this defendant denies all and singular the allegations in
12 plaintiff's petition contained, and says that he, said defendant, is not guilty of the said supposed grievances laid to his charge in plaintiff's petition, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath therein complained of him. And of this the said defendant puts himself upon the country.

BALLINGER & JACK,
Attys. for Deft. C. G. Wells.

(Endorsements:) Filed 10th May, 1867. L. Jones, clk.

Order: alias citation for Hutchins & cont'd.

From the minutes, May term, May 10th, 1867.

MARCUS RADICHE
v.
WILLIAM J. HUTCHINS & C. G. WELLS. } 61.

It appearing from the marshal's return that service has been made upon defendant Wells only, it ordered that alias citation issue as to defendant Hutchins, and that the cause be continued.

Order: service on Wells quashed.

From the minutes, May term, May 11th, 1867.

MARCUS RADICHE
v.
WILLIAM J. HUTCHINS & C. J. WELLS. } 61.

On motion the service in this cause was quashed.

13 *Alias citn. for Hutchins.—Issued Sept. 4th*, 1867.

United States circuit court.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon William J. Hutchins, if to be found in your district, to be and appear before the honorable circuit court of the United States at the next term thereof, to be holden for the fifth judicial circuit, at the court-rooms thereof, in the city of Galveston, on Monday, the second day of December next, to answer the petition of Marcus Radiche against William J. Hutchins and Clinton G. Wells, in an action of damages, of which you will serve the said defendants with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this 4th day of September, in the year of our Lord eighteen hundred and sixty-seven, and of American Independence the ninety-second year.

[SEAL.]

LEVI JONES,
Clerk Eastern District Texas, at Galveston.

14 *Marshal's return.*

Received Sept. 9th, 1867, and on the 16th day of November, 1867, I executed the same by giving the defendant, W. J. Hutchins, in Houston, a true copy of this writ, and a copy of the petition certified by the clerk of this court.

J. J. BYRNE, *U. S. M.*,
By JAS. G. TRACY, *Depty.*

(Endorsements:) Issued 4th Septr., 1867. L. Jones, clk. Filed Novr. 23d, 1867. L. Jones, clerk.

Order: continuance.

From the minutes, Decr. term, 1867; Feby. 1, 1868.

MARCOS RADICHE
v.
W. J. HUTCHINS & C. G. WELLS. } 61.

Continued as on affidavit of defendants.

Order: continuance.

From the minutes, May term, May 6th, 1868.

MARCOS RADICH
v.
W. J. HUTCHINS & C. G. WELLS. } 61.

Continued by consent.

Order: continuance.

From the minutes, Decr. term, 1868, Jany. 12, 1869.

MARCOS RADICH
v.
W. J. HUTCHINS & C. G. WELLS. } 61.

Continued by agreement.

15 *Order: continuance.*

From the minutes, May term, July 7th, 1869.

MARCOS RADICH
v.
W. J. HUTCHINS & C. G. WELLS. } 61.

Continued by the court.

Order: continuance.

From the minutes, Decr. term, Decr. 7th, 1869.

MARCOS RADICH
v.
W. J. HUTCHINS & C. G. WELLS. } 61.

Continued.

Order: continuance.

From the minutes, May term, May 10, 1870.

MARCUS RADICH
v.
W. J. HUTCHINS & C. G. WELLS. } 61.

Continued.

Order: continuance.

From the minutes, special term, May 18, 1871.

MARCOS RADICHE
v.
W. J. HUTCHINS & C. G. WELLS. } 61.

Continued.

Answer of Wm. J. Hutchins.—Filed Feby. 22, 1872.

In the circuit court of the United States for the eastern district of Texas, at Galveston.

MARCOS RADICHE
v.
WM. J. HUTCHINS & CLINTON G. WELLS. } No. 61. C. L.

16 In the above-stated cause, now comes William J. Hutchins, one of the defendants, and for his several and separate answer herein, says that the plaintiff ought not further to have and maintain his suit against this defendant, and ought not to have and recover anything of this defendant by reason of anything by him alleged in his petition, because defendant says:

1st. That the matters and things in said petition alleged, in manner as therein stated, are not sufficient in law to entitle plaintiff to maintain his said suit nor to recover herein; wherefore defendant demurs to said petition, and prays judgment of the court thereof.

2nd. Further answering, in case his demurrer should be overruled, and it should be necessary to do so, this defendant says that plaintiff ought not to have and recover, because he says that the matters alleged by plaintiff in his petition are not true in manner and form as therein stated; and defendant denies all and singular the material allegations in said petition contained, which are not hereinafter specially admitted; and hereof puts himself on the country, and prays judgment.

17 3d. And for further and special answer and plea, defendant says that plaintiff ought not to recover, because defendant admits and avers that plaintiff was a resident of the State of Texas at the institution of this suit, and was so resident and domiciliated in said State before and at the time of the supposed wrongs by him averred; and that plaintiff did then and there desire to export cotton from the State of Texas to Mexico and elsewhere in foreign countries, and that he had been and was then engaged in the trade and business of exporting cotton from, and importing goods and merchandise into, the State of Texas, both by land and sea, in defiance of and contrary to the laws of the United States and in breach of the blockade of the ports of said State, which had been declared and was then maintained by authority of the United States; and defendant says that he is informed and believes, and so charges the facts to be, that the plaintiff did voluntarily offer and enter into an agreement with one William A. Broadwell, who was then an officer of the organization known and called the

18 Confederate States of America, and who was also engaged in the business of exporting cotton from, and importing goods and merchandise into, the State of Texas for the use and benefit and support of the said Confederate States of America and its armies, under and by virtue of authority to him from said government and its military au

thorities; by which agreement the plaintiff sold or exchanged certain goods, wares, and merchandise, and munitions of war by him illegally imported, or which had been so illegally imported and by him purchased, for and in consideration of the promise and pledge by said Wm. A. Broadwell that said government and its military officers would aid and assist him, the said plaintiff, in the exportation of a quantity of cotton, the number of bales alleged by plaintiff to be about 450 bales, which the plaintiff then pretended that he had in possession, or which he might thereafter purchase for export, contrary to, and in defiance of, the laws of the United States, and of its blockade aforesaid, which aid and assistance to plaintiff was promised by certain certificates signed by said W. A. Broadwell, or by his orders and authority as an
19 officer aforesaid, and which were then known and usually called cotton-permits, and which were worth, among those engaged in the export of cotton, dollars per bale; and defendant says that said transaction as herein alleged is the same supposed cause of action alleged by the plaintiff, and not otherwise; and that this defendant was not connected therewith, and did not aid therein in manner as alleged by plaintiff; all of which he is ready to verify, and prays judgment.

4th. And for further plea and answer herein, defendant says that plaintiff ought not to recover, because he says that the plaintiff was at the time, and long had been before the supposed wrongs by him complained of in his petition, a domiciliated resident of the State of Texas while the civil war was pending between said State and other States organized as and called the Confederate States of America and the United States of America, and that plaintiff sympathized with and aided the said Confederate States in said civil war, and voluntarily submitted himself to and acquiesced in and recognized the authority and power exercised by said Confederate States, and in the so-called laws or
20 regulations established by said authority and by the power of its armies; that he well knew the fact to be that regulations of the trade in cotton and of its exportation from the State of Texas to Mexico or elsewhere had been established, published, and declared by the orders and authority of the said Government and its military officers, and that a military bureau had been established, of which one William A. Broadwell had been and was appointed the chief and called lieutenant-colonel, with authority to control said trade and the export of cotton in accordance with the regulations aforesaid, and also to purchase supplies and ammunition for the support and use of the armies of the said Confederate States; and that plaintiff voluntarily engaged in the said trade and export of cotton and in importing goods and merchandise while said regulations were well known; and defendant says that the supposed wrongs alleged and the supposed taking of goods and money whereof the plaintiff now complains, were in truth and fact the regular and proper enforcement of the said orders and regulations by said W. A.
21 Broadwell and those acting with him under authority aforesaid, of which orders and regulations the plaintiff had full knowledge and notice before and when he engaged in said business of importing goods and exporting cotton as aforesaid, and to which he had voluntarily submitted, as a resident domiciliated in the said State of Texas during the said civil war; all which defendant is ready to verify, and prays judgment.

BALLINGER, JACK & MOTT, &
GRAY & BOTTS,
Attys. for Deft.

(Endorsements:) Filed Feb'y 22, '72. Levi Jones, clerk.

Order: leave to deft. Wells to amend.

From the minutes Dec. term, 1871, Feb'y 23d, 1872.

MARCUS RADICH
v.
WM. J. HUTCHINS & C. G. WELLS. } 61.

Leave to defendant Wells to amend.

Amended answer of C. G. Wells.—Filed Feb'y 28th, 1872.

In the circuit court of the United States, eastern district of Texas.

MARCOS RADICHE
v.
W. J. HUTCHINS & C. G. WELLS.

22 With leave of the court the defendant, C. G. Wells, amends his defence in this cause—

I. By assigning as additional grounds of the demurrer to the plaintiff's petition heretofore filed by said defendant, the following:

1st. The petition does not set forth or show any legal and sufficient ground or cause of action on the part of plaintiff against this defendant.

2nd. The petition does not set forth or show any cause of action against this defendant with sufficient certainty; but makes allegations against the defendants therein named and their confederates, which are general, vague, and indefinite, and without specification of facts sufficient to inform defendant of the acts or wrongs for which he is sued.

3d. The petition shows that the plaintiff in the matter for which he sues was endeavoring to act and did act in violation of the laws and public policy of the United States, and is not entitled to maintain any action growing out of the facts stated in the petition.

4th. The petition shows the plaintiff to have been an enemy to the United States, engaged in giving aid and assistance to the enemies thereof, and to the military authorities of the so-called Confeder-
23 ate States, and is not entitled to have or maintain any action growing out of the facts stated in the petition.

Wherefore this defendant prays judgment, &c.

Not waiving said demurrer, but specially insisting on the same, for further answer and defence herein this defendant says that plaintiff ought not to have or maintain his action herein against this defendant, because—

II. All and singular the allegations in plaintiff's petition are untrue, and are hereby denied; and this defendant is not guilty of the wrongs and injuries, or any of them, as set forth and alleged in plaintiff's petition; and of this he puts himself upon the country. Wherefore he prays judgment, &c.

III. He denies all and every allegation in plaintiff's petition, except those herein admitted for the purposes of this plea. He specially denies all and every allegation of conspiracy, combination, or confederacy by defendant with any other person, as charged in the petition. He says that said plaintiff, during and throughout the late rebellion, was a resident within the State of Texas, claiming to be a citizen of Mexico, and engaged in trade across the line of the Rio Grande River, sepa-
24 rating the United States and Mexico, and through the blockaded

ports of Texas, and thus exporting cotton from Texas to Mexico and other foreign countries, and importing into Texas goods, merchandise, and stores, the products of countries other than the United States, to be sold to and exchanged with the military authorities of the so-called Confederate States, for the support of the insurgent armies, and to be supplied to the insurgent population of the State of Texas to enable them to support and uphold the said rebellion and the armies thereof; and that throughout the rebellion the said plaintiff, by himself and his agents, was actively engaged in dealing with and giving aid and assistance to the military authorities of said Confederate States, and in the systematic and constant violation of the laws and public policy of the United States. This defendant denies the allegations in the petition as to the existence or pretended exercise of powers in the petition set forth of the so-called cotton-office, or of defendants or others as officers or members thereof, and denies all the allegations of the petition with reference to the seizure or impressment of plaintiff's cotton, or the imminent danger thereof. The transactions of plaintiffs, which are the same
25 alluded to in the petition, were not in any respect with the defendants, or either of them, but with Colonel William A. Broadwell, an officer of the Confederate States army and the chief of the cotton bureau of the trans-Mississippi department, all of whose acts and transactions with plaintiff were duly authorized by the laws of the Confederate States, and were in pursuance of and in accordance with the military orders and regulations of the Confederate States military commander of the trans-Mississippi department, including the State of Texas, and were well known to plaintiff and assented to by him without compulsion of any kind; he being then as aforesaid actively engaged in giving aid and assistance to the insurgent armies and population of the State of Texas. That defendants herein or either of them did not have any negotiation or transaction with said plaintiff in the premises, or any agency or influence in inducing the transaction on his part, and this defendant had no connection with it whatever beyond the signature of papers under orders of said Broadwell, whom, as his superior military office', he was compelled to obey; such papers having been previously agreed on and assented to by the plaintiff and said Broad-
26 well. That said plaintiff, being in possession of bagging & rope imported by him into Texas, from Mexico or other foreign country, during the said rebellion, in violation of the laws and public policy of the United States, he proposed to said Broadwell to deliver the same to the military authorities of the said Confederate States for the use and benefit of the said Confederate States, on consideration of his receiving from the Confederate States, through said Broadwell, permits to export 450 or some other less number of bales of cotton from Texas into Mexico, or through the blockaded ports of Texas, to any foreign country; and said bagging & rope and said permits were then and there delivered in accordance with the agreement between said plaintiff and said Broadwell. That said permits were then and there of the ready cash value of thirty-five dollars in specie money for each and every bale of cotton included therein, and exceeded in aggregate market and actual value at the time all the bagging and rope delivered by plaintiff to the Confederate States of America or any officer thereof. This defendant does not admit but expressly denies that said plaintiff was the lawful owner of the
27 amount of cotton which he so received the permits of said Confederate States to export from the State of Texas, or of any cotton whatever, and requires strict and clear proof thereof. And defendant believes and alleges that the object of plaintiff in fact was to speculate

on said permits, or to apply them to cotton thereafter to be acquired by said plaintiff; but that the cotton so to be exported from Texas and from the United States by virtue of said permits was to be exported by plaintiff or parties under him, in violation and defiance of the laws and public policy of the United States in that behalf, and without payment of any tax whatever on said cotton to the United States.

All which this defendant is ready to verify.

Wherefore he prays judgment, &c.

This defendant also pleads and alleges the same special defences set up in the third and fourth special pleas of his co-defendant Hutchins, and adopts the said pleas, and each of them, and here re-asserts and re-pleads the same on the part and behalf of this defendant.

BALLINGER & JACK,
Attys. for Deft. C. G. Wells.

(Endorsement:) Filed Feby. 28, '72. Levi Jones, clk.

28 *Int'g's to Wm. G. Hale.*

No. 61, C. L. U. S. circuit court.

MARCOS RADICHE
v.
HUTCHINS & WELLS.

Interrogatories to William G. Hale, a resident of New Orleans, Louisiana, now temporarily at Galveston, in Texas, to be examined as a witness in behalf of defendants in the above suit.

1st. This suit grows out of an alleged transaction by plaintiff with some of the confederate officers connected with the confederate cotton-office at Houston, in the year 1864, about the 10th of July of that year. It is alleged that the plaintiff had in his possession 450 bales of cotton, and that he was compelled by defendants and others acting with them, in the cotton-office at Houston, to give up or surrender one-half of his cotton to said cotton-office, or to pay the value of said half in goods and money, in order to be permitted to transport and export his cotton from Texas into Mexico; and that the defendants claimed the right to demand these terms from him under pretence of authority of certain illegal military orders of the confederate government or its mili-
29 tary officers, to which plaintiff was compelled to submit by duress of the armed force of the Confederate States. Please state whether you were acquainted with plaintiff, Marcos Radiche, before and in July, 1864; and, if so, state in what business he had been engaged before then; for how long a time had he been so engaged; and where had he been so engaged. State particularly what, if anything, you may know of plaintiff's importing goods and exporting cotton during the late civil war.

2nd. Did you have business transactions with the confederate cotton-office at Houston, about July, 1864? If so, who was the chief of that office at that time; and who made negotiations and gave permits for exporting cotton to Mexico, and under what authority he acted?

3d. Do you know personally anything about the transaction with plaintiff of which he now complains? If so, state how you knew of it; at whose instance was the transaction inaugurated, or who began the negotiation; and state particularly all the circumstances and facts connected with it which came under your observation.

4th. State particularly also *what* the defendant Hutchins, at
30 that time, acted in the cotton-office in purchasing cotton, or granting permits for the exportation of it.

5th. Please state any other facts not already stated, known to you, and which will throw light on the merits of this controversy?

BALLINGER, JACK & MOTT &
GRAY & BOTTS,
Attys. for Defts.

We agree that the foregoing interrogatories and annexed cross-interrogatories may be answered and sworn to by Wm. G. Hale, esqr., before the clerk of the United States circuit court, without commission or other formality; and that the answers may be read in evidence by either party, subject to legal exceptions for irrelevancy or inadmissibility.

BALLINGER, JACK & MOTT &
GRAY & BOTTS,
Attys. for Defts.
L. A. & L. THOMPSON, JR., &
WILLIE & CROSBY,
For Plaintiff.

Cross int'g's to Wm. G. Hale.

In circuit court U. S., 5th cir'c't & eastern dist. of Texas.

MARCOS RADICHE
v.
WILLIAM J. HUTCHINS AND CLINTON G. WELLS. } C. L. No. 61.

31 Cross-interrogatories for William G. Hale, esq., witness proposed to be examined by defendants, on their part and behalf:

1st. If you answer the 1st direct interrogatory in the affirmative, that you knew plaintiff in July, 1864, then state when you first became acquainted with him; where did he then reside, and what was his occupation; when did plaintiff first engage in the business of importation of goods, and exportation of cotton? Declare fully, &c.

2d. If you say that plaintiff was engaged in the importation of goods, then state how you know that fact; what goods did he import, and where were the goods imported from? Declare fully, &c.

3d. If *in* answer to the second direct interrogatory in the affirmative, and state who was the chief of the confederate cotton-office in Houston, then state fully and particularly how and by whom the said office was created and established, and for what purposes; the power and authority given or attempted to be given to said office. Was it created and established by any order in writing, by any written law, or
32 by any other writing? then annex to your answer a copy of such law, order, or other writing? Was the defendant Hutchins at any and what time chief of said cotton-office at Houston? If yes, when did he cease to perform the duties thereof? Declare fully, &c.

4th. If *in* answer to the 3d direct interrogatory in the affirmative, and that you have any knowledge of the transaction, the subject of this suit, then state if you obtained that knowledge from the plaintiff? Do you not know that defendant Hutchins acted on the application of plaintiff for a permit, and gave a written answer thereto? Declare fully, &c.

5th. State any other fact connected with this transaction, and explanatory thereof, to which you have not been particularly interrogated.

L. A. & L. THOMPSON, JR., &
WILLIE & CROSBY,
For Plaintiff.

Deposition of Wm. P. Hale.

In the circuit court of the United States for the eastern district of Texas.

MARCOS RADICH
v.
W. J. HUTCHINS & CLINTON G. WELLS.

33 Before me, Levi Jones, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, at my office in the city of Galveston, in said district, on the 24th day of February, A. D. 1872, personally appeared Wm. G. Hale, to me known as the witness whose testimony is desired to be taken upon the interrogatories and cross-interrogatories hereto attached, and, being duly sworn by me to testify the truth, the whole truth, and nothing but the truth, in reply to said interrogatories and cross-interrogatories he testified as follows:

To the first direct interrogatory. That he was acquainted with Marcos Radiche before and in July, 1864. In 1864, said Radiche was engaged in buying cotton in Texas out of the sale of goods and live-stock of various kinds, and he had been so engaged for some time previously thereto, say for two years before that period; the exact time the witness is unable to state. His purchases had been so made in and near Columbus and Houston. Witness knows that said Radiche had been so engaged as a general fact and from statements of said Radiche to
34 him, without, however, being aware of the details of the particular transactions.

To the second interrogatory. That witness did have business transactions as agent for other parties with the confederate cotton-office at Houston about July, 1864; that the nominal chief of said office was then Col. Wm. J. Hutchins, who had under him Capt. C. G. Wells and a number of other employees & subordinates, but the real chief and director of all the operations of the office, at that time, was Col. Broadwell, who was sent there specially from Shreveport with almost unlimited powers; that he, Col. Broadwell, made negotiations and gave permits for exporting cotton to Mexico at that time; and witness understood that he acted under directions from the secretary of war and of the treasury of the Confederate States, and witness thinks that he has seen the orders, but he is not certain as to this fact.

To the third interrogatory. That witness was present during some conversation or conversations between Col. Broadwell and the plaintiff in the office of the cotton-bureau of the Confederate States at Houston, Texas; witness had called at the office for the purpose of seeing
35 Col. Broadwell upon business, and the plaintiff was either there before the witness arrived or came in shortly afterwards; he was accompanied by Mr. Algernon P. Thompson, a lawyer employed by him and one or more other persons. His visit appeared to be voluntary and, as witness understood from the conversation, was for the purpose of obtaining from Col. Broadwell permits for the exportation of some

cotton to Mexico, but witness cannot recollect with distinctness whether the payment that said plaintiff proposed to make for the permits had been voluntarily offered by him or not, or who inaugurated or began the negotiation. The plaintiff appeared to object to the terms of Col. Broadwell, but not to the execution of the orders which Col. Broadwell explained to him; that is to say, he objected to the amount, but not to the principle. The attention of witness was called to this transaction by both Col. Broadwell and the plaintiff and, being intimate with both parties, he was requested to explain the views of one to the other, as Col. Broadwell did not speak Spanish and the plaintiff spoke English with difficulty; witness recollects that the plaintiff afterwards,
36 upon the street, complained to him that Broadwell was too strict or severe or exacting, or a phrase of a similar character, but witness does not remember that the plaintiff objected to the exercise of power by Col. Broadwell as an illegal or unfair act. Witness has no doubt from the conversation between the parties that the consideration for the permits, whether in money or goods, was paid into the cotton office aforesaid by said plaintiff, but witness does not know what official actually received it.

To the fourth interrogatory. That the defendant Wm. J. Hutchins, at the time of the transaction above stated, acted, as before said, as the nominal chief of said cotton office, but was then subject entirely to the absolute control of Col. Broadwell, and refused to take any action or discretion in the management of its business except to sign such usual orders as were directed by said Broadwell and prepared for him by said Wells or Mr. Percy. In fact, said Hutchins took very little interest in the transactions relating to the cotton-office.

To the fifth interrogatory. That witness cannot, at this moment, say anything farther in reply to this general interrogatory than has
37 been above stated or is called for in the specific cross-interrogatories, except that the strong impression produced upon him by the general course of the business in said cotton-office was that Col. Broadwell not only had the entire directions of its affairs, but was imperative, exacting, and minute in his requirement to exact obedience to his orders.

To cross-interrogatory No. 1. That witness became first acquainted with plaintiff about the year 1850; that plaintiff then resided principally at Matamoras, in Mexico, but some years after that had a house at Brownsville, in Texas, and resided at either place indifferently; that he was a general trader and speculator in rather a small way from the time witness first knew him, but did not engage in the business of exporting cotton to Mexico from Texas until after the commencement of the late war, and witness does not know of his own knowledge that he ever exported any cotton from Texas.

To cross-interrogatory No. 2. That witness does not know di-
38 rectly that said plaintiff ever imported any goods into Texas, but plaintiff told witness, on several occasions during the war, that he had various articles for sale, such as bagging, rope, and coffee, and witness inferred, from the fact that these articles were of foreign production, that they had been imported into Texas from beyond the limits then occupied by the Confederate forces.

To cross-interrogatory No. 3. That witness cannot state now how the confederate cotton-office at Houston was originally established, or any other particulars inquired of in the first sentence of this cross-interrogatory, with sufficient directness and precision to entitle his reply to weight as testimony, because he has not now access to the documentary

proof then in his possession; but his impression is strong that said office, as constituted in July, 1864, was regulated, not by any statute law, but by orders from the Confederate authorities at Richmond and in Shreveport. Afterwards an act was passed by the confederate congress regulating the exportation of cotton, and perhaps some similar act may have before been passed; but according to the recollection of witness the general direction of all such business in the trans-
39 Mississippi department was at the time of the transactions herein involved *was* in the hands of the military officers of the confederate army. The defendant Hutchins was, before the period mentioned, that is, July, 1864, the nominal chief of the cotton-bureau at Houston. But after the arrival of Col. Broadwell, some time before that period, the said defendant, as before stated, ceased to have any practical direction of affairs in the office, and allowed the whole of the business to be absorbed and controlled by said Broadwell. Witness cannot better express the impression produced on his mind by his intimate acquaintance with the business of that bureau than to say that the defendant Hutchins represented the dignity of the confederate government and Broadwell its energy. Hutchins appeared to have been selected as the person best calculated to reconcile the people of Texas to the active measures enforced by Broadwell, but without, as I know, from them both, any co-operation or consultation on the part of the former. Witness does not think that said Hutchins resigned his nominal position until the spring of 1865.

40 To cross-interrogatory No. 4. Witness has replied to the first sentence of this interrogatory in his answers to the direct interrogatories. Witness does not know that said Hutchins acted on the application of the plaintiff for a permit or gave a written answer thereto, but neither party ever asserted this to be the fact within the hearing of witness. So far as witness knew or heard, Hutchins left the entire control of this business to Broadwell.

To cross-interrogatory No. 5. That witness does not now recall any circumstances pertinent to the case known to him of his own knowledge, and although he has heard of facts in relation hereto from persons not parties to this cause and some time after the transactions had taken place, witness does not think it proper to state what was thus told him. Witness, upon further recollection, desires to say, in additional reply to the last interrogatory in both the direct and cross-examination, that he does not now remember who if fact actually signed the orders for the permits at the time mentioned. His recollection, however, is, that Col. Broadwell, with a desire, as *as* he had no permanent office in the trans-
Mississippi department, to avoid money-accounts as incurred by
41 himself, declined to sign any actual receipt or order except in cases to be referred to Shreveport, and in place thereof required the subordinate officers in the cotton-bureau at Houston to sign papers to complete transactions which he had negotiated, and in this particular case the whole transaction was directed by said Broadwell. Witness also desires to correct his statement above given in reference to the official position of defendant Hutchins, by saying that after said Broadwell came to Houston, in June, 1864, said Hutchins no longer acted as chief of the cotton-bureau there, but was assigned to the duty of purchasing goods for the Confederate States, and that the duty of paying for those goods was assumed by Col. Broadwell.

WILLIAM G. HALE.

And the foregoing deposition was duly signed, as above appears, by said witness, and sworn to by him as hereinbefore mentioned.

In testimony whereof I hereunto set my hand the day and year above written.

LEVI JONES,
Clerk U. S. Circt. Court E. D. T., G.

(*Subpœna for A. M. Kleiber.—Issued February 26th*, 1872.)

42 The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon A. M. Kleiber to be and appear before the honorable circuit court of the United States for the eastern district of Texas at the court-house in the city of Galveston, on the 29th day of February, A. D. 1872, at 10 o'clock a. m., to testify in behalf of defendants in the suit of Marcos Radiche v. W. J. Hutchins and C. G. Wells.

Herein fail not.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States and the seal of the said circuit court, at the city of Galveston, this 26th day of February, in the year of our Lord one thousand eight hundred and 72.

LEVI JONES,
Clerk Eastern District Texas, at Galveston.

Marshal's return.

Rec'd Feby. 28, '72. Ret'd not found in my district in time for service.

A. B. HALL,
Dp. U. S. M., E. D. Tex.

(Endorsement:) Returned & filed March 30, '72. Levi Jones, clk.

43 *Subpœna for H. R. Percy.—(Issued Feb'y 26th*, 1872.)

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon H. R. Percy to be and appear before the honorable circuit court of the United States for the eastern district of Texas, at the court-house in the city of Galveston, on the 29th day of Feb'y, A. D. 1872, at 10 o'cl'k, to testify in behalf of defendants in a cause pending in said court entitled Marcos Radiche v. Hutchins & Wells.

Herein fail not.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Galveston, this 26th day of Febr'y, in the year of our Lord one thousand eight hundred and 72.

[SEAL.]

LEVI JONES,
Clerk Eastern District Texas, at Galveston.

Marshal's return.

Rec'd and executed Feb'y 28th, 1872, by serving the within named H. R. Percy, as required in this writ.

A. B. HALL,
Dpt. U. S. M., E. D. Tex.

44 (Endorsement:) Returned & filed M'ch 30, '72. Levi Jones, cl'k.

Subpœna for Geo. Goldthwaite.—(*Issued Feb'y 27th*, 1872.)

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon Geo. Goldthwaite to be and appear before the honorable circuit court of the United States for the eastern district of Texas, at the court-house in the city of Galveston, on the 29th day of February, A. D. 1872, to testify in behalf of plaintiff in a cause wherein M. Radich is pl'tff, and W. J. Hutchins & C. G. Wells are defendants.

Herein fail not.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, and seal of the said circuit court, at the city of Galveston, this 27 day of Feb'y, in the year of our Lord one thousand eight hundred and seventy-two.

LEVI JONES,
Clerk Eastern District Texas, at Galveston.

Marshal's return.

Rec'd & ex'd Feb'y 28, '72, by serving the within named George
45 Goldthwaite as required in this writ.

A. B. HALL,
Dp. U. S. M., E. D. Tex.

(Endorsement:) Returned & filed M'ch 30, '72. Levi Jones, c'lk.

Subpœna for Thos. Reed & others.—(*Issued Feb'y 28th*, 1872.)

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon Thos. Reed, E. Parizot, A. Bernard, A. Somerville, T. W. Folk, & J. W. Lang, to be and appear before the honorable circuit court of the United States for the eastern district of Texas, at the court-house in the city of Galveston, on the 29th day of February, A. D. 1872, at 10 o'clock a. m., to testify in behalf of defendants in a cause pending in said court entitled Marcos Radiche v. Wm. J. Hutchins & C. G. Wells.

Herein fail not.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Galveston, this 28th day of Febr'y, in the year of
46 our Lord one thousand eight hundred and 72.

LEVI JONES,
Clerk Eastern District Texas, at Galveston.

Marshal's return:

Rec'd this writ on the 28th day of Feb., 1872, and executed the same day by serving the within-named persons; E. Parazot not found.

WM. E. PARKER,
U. S. Marshal,
By T. H. L. PAYNE, *Dep'ty.*

(Endorsement:) Returned and filed M'ch 30, '72. Levi Jones, cl'k.

Subpœna for F. Gonzales & others.—(Issued Feb'ry 28th, 1872.)

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon F. Gonzales, T. B. Stubbs, R. S. Willis, C. H. Leman, A. J. Walker, S. K. Labatt, & J. M. Couget, to be and appear before the honorable circuit court of the United States for the eastern district of Texas, at the court-house in the city of Galveston, on the 29th day of February, A. D. 1872, at 10 o'clock a. m., to testify in behalf of defendants in a cause pending in said court
47 entitled Marcos Radiche v. Wm. J. Hutchins & C. G. Wells.

Herein fail not.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Galveston, this 28th day of Febr'y, in the year of our Lord one thousand eight hundred and 72.

[SEAL.]

LEVI JONES,
Clerk Eastern District Texas, at Galveston.

Marshal's return.

Rec'd this writ on the 28th day of Feb., 1872, and executed the same day by summoning the within-named persons; A. J. Walker was not found.

WM. E. PARKER,
U. S. Marshall,
By T. H. L. PAYNE, *Deputy.*

(Endorsement:) Returned and filed March 30, '72. Levi Jones, clk.

Interrogatories to D. Wolf.

In U. S. circuit court, eastern district of Texas.

MARCOS RADICHE
v. } 61.
W. J. HUTCHINS & C. G. WELLS.

Interrogatories to D. Wolf, who resides at Brownsville, Texas, but is now temporarily in Galveston, and about to return to Brownsville, more than 100 miles from Galveston, a witness in behalf
48 of defendants in the above cause.

1st. Whether or not you know the plaintiff in this case, and how long you have known him.

2nd. Whether or not you know the business in which the plaintiff was engaged in Texas during the late civil war, and especially throughout the year 1864. If so, state the same fully. If in selling goods, state what class of goods, when, where, by whom, and in what manner brought into Texas, and if in purchasing any of the products of the State, state what was his course of dealing or action with such products. State all facts bearing on this subject fully and specially.

3d. Do you or not know of any dealings or transactions by said Radiche with the confederate authorities? If so, state the same fully.

4th. Do you or not know of any connexion by said plaintiff with running the blockade into or out of Texas during the war? If so, state all such facts and particulars.

5th. Do you or not know of any dealing by said plaintiff in confederate permits to export cotton? If so, state the same, giving dates and all particulars fully.

49 6th. Do you or not know of any sales of cotton made by said Radiche in the year 1864 or 1865? If so, state the same fully and particularly.

7th. State all other & further facts in your knowledge which will be of benefit or advantage to the defendants in this suit.

8th. Do you or not know the general reputation of the plaintiff, Marcos Radiche, for truth and veracity? If so, is it good or bad, and is it such that you would or would not believe him on oath?

BALLINGER, JACK & MOTT & P. W. GRAY,
Counsel for Defts.

Cross intgs. to D. Wolf.

MARCOS RADICHE
vs.
W. J. HUTCHINS & C. G. WELLS.

Cross-interrogatories to be propounded to D. Wolf.

1st. If in answering the 2d direct interrogatory you speak of the business in which M. Radiche was engaged during the year 1864, or at any other time from 1861 to 1865, both in buying and selling goods, and products of the country, then answer how this information was acquired; do you know the facts of your own knowledge, or do you derive

50 the same from the information of others? Did you sell to or buy from him any goods, wares, &c., or produce? If yes, what, and how and by whom the said goods were brought into Texas? Declare fully your knowledge of the truth herein.

2nd. Where did you reside from 1861 to 1865, and what business were you engaged in? Were you or not engaged in the importation of goods, &c., and the export of products of the country? and, if so, from and to what place or places, stating the port or ports in the State of Texas in and to which they were introduced. Declare fully, &c.

3d. If you answer the 3d direct interrogatory in the affirmative, then state how you acquired the information. Do you know the fact of your own knowledge, or do you speak from the information of others? Declare fully, &c.

4th. If you answer the 4th direct interrogatory affirmatively, then state by what means or in what capacity you acquired such knowledge. Were you in the Confederate States' service? Do you know the fact from your own knowledge, or do you derive it from the information of others? What port or ports or place or places in Texas was Marcos Radiche engaged in importing goods and exporting produce of the

51 country in violation of the blockade; and how were the said ports or places blockaded? Was it by a land or naval force? describing the mode and manner particularly. Declare fully, &c.

5th. If you answer affirmatively to the 5th, 6th, and 7th direct interrogatories, then state by what means and in what capacity you acquired such knowledge. Do you know the facts you depose to from your own knowledge of them, or do you derive them from the statements or information of other persons? To whom did M. Radiche sell cotton or Confederate States' permits to export cotton? Declare fully, &c.

6th. If in answer to the 8th direct interrogatory you state that you

the general reputation of M. Radiche for truth and veracity, and that it is not good, then state how long you have known him. Where did he reside when such general reputation was acquired, and where did he reside during the term of the late civil war? Have you ever heard the reputation of Marcos Radiche discussed by and amongst his neighbors, or any number of them? If yes, how often, when, where, and what number of persons were present at each? State names of any and all persons whom, at any time, you have heard speak of Marcos Radiche as a man not entitled to belief upon his oath. Declare fully, &c.

52 7th. Are you and Marcos Radiche on good and friendly terms with each other; or have you had any quarrel, disagreement, or falling out? Has the general ill reputation of Marcos Radiche in any manner disturbed or interfered with your precedent amicable social relations? Declare fully, &c.

L. A. THOMPSON,
Pro quer.

Answer to within may be taken by any U. S. commissioner or clerk or State officer authorized to take depositions, and returned in accordance with State practice or filed in the U. S. circuit court, subject to all other objections.

BALLINGER, JACK & MOTT,
For Defts.

L. A. THOMPSON,
Pro quer.

Deposition of D. Wolf.

In the circuit court of United States, 5th circuit.

MARCOS RADICHE *vs.* HUTCHINGS & WELLS. } No. 61, L. D.

Deposition of D. Wolf, a witness of lawful age, in answer to direct and cross interrogatories propounded to him by the parties to the
53 above-entitled suit, taken at Galveston this 4th day of June, 1872, before Edward T. Austin, a duly commissioned & qualified notary public for the county of Galveston, under agreement of counsel endorsed on the interrogatories which are herewith returned.

To int. first, he says: I know Marcos Radiche, the plaintiff in this suit; I have known him over twenty years.

To int. 2nd, he says: Marcos Radiche was engaged during the late civil war in buying and selling goods and cotton, and was so engaged in the year 1864. The goods were principally goods that were brought by Mexican traders into Texas. The cotton he bought he sold again, but some he kept until the last. He gave cotton for goods, and goods for cotton. He traflicked. His dealings were principally between Columbus, Alleyton, and Houston.

To int. 3d, he says: I do not know of any transactions of his with the confederate authorities.

To int. 4th, he says: I know of his having made purchases of goods from persons who were direct from Mexico, during the war. I do not know of any business connection between Radiche and blockade-runners.

To int. 5th, he says: I know that he offered for sale confederate

54 permits to export cotton. He offered some to me, at my store in Alleyton, in 1864, and sold some to Bruno Lasana and Lorenzo Galvan in the latter part of 1864, or in the early part of 1865.

To int. 6th, he says: I know of sales of cotton made by Radich' in 1864 or 1865, but I cannot give dates or particulars. I know that Mr. Longcope sold some three hundred bales of cotton for Radich' in the latter part of 1865. This was cotton Radich' had owned some considerable time, and had hidden away near Columbus, on the Brazos, and were remains of a large lot.

To int. 7th, he says: I do not know what will be of advantage to the defendants.

To int. 8th, he says: The reputation of Radich' for truth was not good; he would deceive his best friends; I would not believe him on oath; he would sell his best friends.

Answers to cross-interrogatories.

To 1st cross, he says: My information is acquired from personal intercourse and direct dealings with M. Radiche. I sold to him and bought from him goods, wares, and produce. I had brought
55 some in myself, and some were brought in by other parties, by the way of Brownsville or Eagle Pass.

To x-int. 2nd, he says: In 1861 to latter part of 1862 I was in Brownsville, on the Rio Grande; from 1862 to 1865 I resided in Alleyton, on the Colorado, in Texas also. I was engaged in a mercantile business. I was engaged in the import of goods and the export of products from the country; from Brownsville to Alleyton inward, and to Brownsville and Matamoras and Laredo outward.

To 3d x-int., he says: I have answered the third interrogatory in the negative.

To 4th x-int., he says: About his purchasing goods from persons direct from Mexico I know of my own knowledge, and I have said that I did not know that he was connected in business with blockade-runners, as partner, &c.

To 5th x-int., he says: To the 5th, of my own knowledge; to the 6th, from being present at the transaction, or from Radiche' own statement; to the 7th, I have said I did not know what would advantage defendants.

To x-int. 6th, he says: I have known M. Radiche over twenty years. He had it (a bad reputation) in Matamoras, Brownsville,
56 Columbus, and Houston; he acquired it by his own transactions with men wherever he was; during the late civil war he resided in Columbus, and was much on the roads; his neighbors and friends did discuss his reputation, and to his face; frequently I have heard him accused of everything that was criminal; his character was bad.

To x-int. 7 he says: I have no particular enmity towards him. He has swindled me among the rest, and it would not do for his best friends to have dealings with him. His reputation has not disturbed our social relations, but from my knowledge and experience it has disturbed our business relations.

D. WOLF.

THE STATE OF TEXAS,
County of Galveston:

I, Edward T. Austin, a notary public for the county of Galveston, do hereby certify that D. Wolf, the witness, whom I know, signed and

swore to the foregoing answers to direct and cross-interrogatories before me, at Galveston, this 4th day of June, A. D. 1872.

Given under my hand and notarial seal this the 4th June, 1872.

57 EDWARD T. AUSTIN, [SEAL.]
Notary Public for Galveston Co.

The envelope containing the foregoing depositions endorsed as follows:

"No. 61. Marcos Radiche vs. W. J. Hutchings and C. G. Wells. Deposition of D. Wolf. Levi Jones, esq., clerk circuit court U. S., at Galveston, Texas."

Across the seal thus: "Edward T. Austin, notary public for Galveston Co., Texas."

Also the following: "Rec'd from the hands of Edwd. T. Austin, the officer before whom the within deposition was taken, June 5, '72. Levi Jones, clerk."

"Filed June 5, '72. Levi Jones, clk."

"Opened by consent of parties. Thompson for plaintiff, by E. R. F.; Ballinger for deft."

Order, continuance.

From the minutes May term, June 13, 1874.

MARCOS RADICH
v.
WM. J. HUTCHINS & C. G. WELLS. } 61.

Continued.

Interrogatories to Casimer Villeneuve.

In the circuit court of the U. S., eastern district of Texas, at Galveston.

MARCOS RADICHE
v.
HUTCHINS & WELLS. } No. 61.

58 Interrogatories to Casimir Villeneuve, a resident of Calhoun County, Texas, a witness in behalf of defendants in the above-entitled cause.

I. Are you, or not, acquainted with the plaintiff, Marcos Radiche? How long have you known him?

II. What was the business of said Radiche during the late civil war, in 1862, 3, 4, & to the close of the war? Where did he reside during that time? What proportion of his time was passed in Texas?

III. Should you have said his business was that of a merchant, or dealer in goods? State the character of goods or articles in which he dealt—those sold by him—where procured, how and when introduced into the State of Texas, and from whence.

IV. If engaged in the purchase of produce, or articles of any kind, state what; and state what he did or attempted to do with the same; what his course of business was; and if you speak of his car-

rying the same, or any, and what, articles out of the State, state where and in what manner they were carried or attempted to be carried, and state all facts tending to show the course of business, during any or all of said years, of said Radiche.

V. Do you or not know of any and what dealings by said Radiche with the confederate military or other authorities, or of any
59 business operations by him with that object? If so, state the same fully and in detail, and state all facts relating to this suit.

VI. Do you or not know the general reputation for truth and veracity of said Radiche? If so, state whether the same is good or bad, or the facts as to said general reputation.

VII. If you know any other or further facts in this case, or which will have any bearing or effect upon it, state the same fully.

BALLINGER, JACK & MOTT,
P. W. GRAY,
Counsel for Defts.

Cross-int'g's to Casimir Villeneuve.

MARCOS RADICHE
v.
HUTCHINS & WELLS.

Cross-interrogatories to be propounded to Casimir Villeneuve.

1st. What are the relations between you and M. Radiche; are you friendly, or is there any ill-feeling between you; have you and the said M. Radiche had any quarrel, dispute, falling out, or misunderstanding, in any social or business matter, which resulted in lawsuits, or any other disturbance of your social relations? Declare fully, &c.

2d. If, in answer to the second direct interrogatory, you speak
60 of plaintiff's busi[illegible] 1862, '3, and '4, and up to the close of the late civil war, th[illegible]e if you were not a partner of the plaintiff during said period, or [illegible] some portion thereof, and what part of said time; and did not disa[illegible]ments, hard and bitter feeling and lawsuits between you grow out [illegible]ne business transactions of your partnership and the settlement the[illegible]of? Declare fully, &c.

3d. Did the plaintiff, at any portion of the time mentioned and specified in said 2nd interrogatory, ever import any goods into Texas from any foreign port or place, or did he buy in Texas the goods which he sold in Texas? Declare fully, &c.

3d. While the plaintiff and yourself were partners in business, were not the purchases of goods made by you and forwarded to him for sales, and where did he then reside? Did you at any time ever inform him how the said goods were brought into Texas, or to the place you purchased them? Declare fully, &c.

4th. During the time that you and plaintiff, who shipped and sent from the State of Texas the cotton and other produce of the count'y bought for exportation [illegible] plaintiff, where did reside during
61 that time; and if awa[illegible]m your place of residence where were you sojourning, and wi[illegible]at purpose and object? Were you not during the whole perio[illegible] a part, and what part of the at Brownsville, in Camero[illegible] Texas, and were not your purchases of goods for the partnership [illegible]here? Declare fully, &c.

5th. If you, in answer to the fifth interrogatory, speak of any dealing or transactions in the way of business with the confederate military or

other authorities, then state how you know the fact, or facts; have you a personal knowledge thereof; do you know the same from your own knowledge, or have you derived it from the statements of other persons? Had you any personal or pecuniary interest in the plaintiff's business transactions with the confederate military or other authorities? Declare fully, &c.

6th. If, in answer to the 6th interrogatory, you speak of the general reputation of Marcos Radiche for truth and veracity, and that it is not good, then state particularly and in detail how you acquired such knowledge. Did you ever reside in the community or neighborhood in which he lived; at what time did you acquire such knowledge; were you ever present at any discussion with respect to his reputation for
62 truth and veracity, and if at more than one, how many; who were present at such discussion or discussions, and what were the social relations of such persons and the plaintiff; were they inimical or friendly to him? Give the names of and every person who expressed any opinion of his general reputation for truth and veracity, and that it was bad. Declare fully, &c.

L. A. THOMPSON, *Pro quer.*

Deposition of Casimir Villeneuve.

Suit pending in the circuit court of the United States for the eastern district of Texas, at Galveston.

MARCOS RADICHE
vs.
W. J. HUTCHINS & C. G. WELLS. } 61.

Answers and deposition of Casimir Villeneuve, a resident of Indianola, Calhoun County, Texas, to the annexed interrogatories propounded to him in the above-entitled cause, taken before C. W. Hartup, clerk of the district court of Calhoun County, Texas, in accordance with the agreement endorsed on the annexed interrogatories.

To direct interrogatory 1st he answers: I am; have known him since 1858 or 1859.

To direct int. 2nd: He was trading Mexican sheep and goods for cotton during said years, and to the close of the war; during this
63 time his whereabouts was generally between Victoria and Houston. He was all the time during the war in Texas.

To direct int. 3d. He purchased all kinds of Mexican goods brought into Texas from Mexico by traders and teamsters.

To direct int. 4th. Plaintiff Radiche traded on the road between Columbus & Houston, with Mexican traders and teamsters, selling or trading cotton for all sorts of Mexican goods, and again trading those goods for cotton; he shipped no cotton out of the State, either by sea or land, to my knowedge.

To direct int. 5th. I don't know of his ever having had any transactions with the confederate military authorities.

To direct int. 6th. I went to Matamoras, Mexico, and Brownsville, Texas, in 1862, (where Radiche had resided,) to purchase goods, and I found in my intercourse at those places with parties who knew said Radiche intimately, that his reputation for truth and veracity was bad. I had conversations with Messrs. Longoria, Yturria, Stillman, and other merchants of the highest respectability, residing in Brownsville & Mat-

amoras, and the general sentiment among them was that he could
64 not be relied on for truth and veracity. I myself would not believe him under oath.

To direct int. 7th. I know nothing further.

Answers of the witness Casimir Villeneuve to the annexed cross-interrogatories.

To x-int. 1st. The relations between plff. and myself are not friendly; we had a business difficulty during the late war, which was settled by arbitration at Houston.

To x-int. 2nd. Plaintiff and myself were partners during the war, and during our said partnership we had disagreements growing out of the business transactions of our partnership, which was settled by arbitration as heretofore stated.

To x-int. 3d. (1st.) Plaintiff Radiche never imported any goods at all, but purchased all of the goods which he traded on, in Texas, of teamsters and Mexican traders who brought them over from Mexico.

To x-int. 3d. (No. 2.) I never made purchases of goods & forwarded to plff., Radich, for sale; all goods purchased by me and sent into Texas were consigned for sale to Col. Sydner at Houston.

To x-int. 4th. I never bought and shipped any cotton or other produce of the country in partnership with plff.; we made contracts
65 while in partnership, for cotton, which we never got, and consequently never exported. My residence during the time in question was at Indianola, Texas. During said partnership, I was once at Brownsville, to purchase goods to pay for cotton, which we had contracted with Col. Bass, of Brazoria, for, but which cotton we never exported for the reason that said, the plff., Radiche, during my absence in Europe, seized the same by writ of injunction, pending which said cotton was destroyed.

To x-int. 5th. I know of no transactions between plff. and the confederate military authorities. I had no interest in any such transactions.

To x-int. 6th. I never resided in the community or neighborhood in which the plff., Radiche, lived, but I acquired my information for his reputation for truth and veracity at the place at which he had resided, from persons who knew him intimately, and who I have heretofore named in my answer to direct interrogatory 6th, and while plff., Radiche, lived in Columbus during the war. I knew him there, and his reputation for truth and veracity among his neighbors there was bad. I had
66 frequent discussions with parties at Columbus as to his character for truth and veracity, among whom were Judge Harcourt, Joe Kleiber, Jno. Dewess, W. Herbert, Rafael Aldret, and others, all of whom concurred in the general opinion that his reputation for truth and veracity was bad.

C. VILLENEUVE.

THE STATE OF TEXAS,
County of Calhoun:

I, C. W. Hartup, clerk of the district court in and for said county and State, do hereby certify that the foregoing answers of Casimir Villeneuve, the witness before named, were made before me, and were sworn to and subscribed before me by the said witness.

Given under my hand and the seal of said court, at Indianola, this 14th day of June, A. D. 1872.

[SEAL.]

C. W. HARTUP,
Clerk D. C. C. C.

Interrogatories accompanying the foregoing deposition endorsed as follows:

"We agree that answers of the witness may be taken to the within, without commission, by any officer, and returned in accordance with State practice, subject to all other objections. Ballinger, Jack & Mott, for defts. L. A. Thomson, *pro quer.*"

67 The envelopes enclosing the foregoing deposition endorsed as follows:

"No. 61. Marcos Radiche, plaintiff, vs. Wm. J. Hutchins & C. G. Wells, defendants. Deposition of Casimir Villeneuve for defendants. Clerk United States circuit court, eastern district of Texas, Galveston, Texas."

"Received this package from the hands of C. W. Hartup, clerk of the district court of Calhoun County, Texas, to be forwarded by due course of mail. Indianola post-office, Texas, June 14, 1872. Jul. Wagner, postmaster."

Across the seal thus: "C. W. Hartup, clerk district court, Calhoun County, Texas."

Also, the following: "Rec'd from the post-office at Galveston, June 19, 1872. C. Dart, clerk."

"Filed June 19, '72. C. Dart, clerk."

"Opened by consent of parties. Thompson for plaintiff, by C. P. F. Ballinger for deft."

Subpœna for A. Somerville & others.—(Issued Jan'y 27th, 1873.)

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon A. Somerville, A. J. Walker, and H. R. Percy to be and appear before the honorable circuit court of the United States for the eastern district of Texas, at the court-
68 house, in the city of Galveston, on the 28th day of Jan'y, A. D. 1873, at 10 o'clock a. m., to testify in behalf of defendants in C. L. 61, Marcos Radich v. Hutchins & Wells, and not depart the court without leave of the court.

Herein fail not.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Galveston, this 27th day of Jan'y, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.]

C. DART,
Clerk E. D. T., at Galveston.

Marshal's return.

Rec'd this writ on the 27th day of January, 1873, and I executed it on the same day of January by serving the within named A. Somerville & A. J. Walker. H. R. Percy served on the 28th day of Jan'y, 1873.

WM. E. PARKER,
U. S. Marshal,
By W. T. CLAYTON,
Deputy U. S. M.

Subpœ. for Pietro Devoti.—(Issued Jan'y 28th, 1873.)

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon Pietro Devoti to be and
69 appear before the honorable district court of the United States for the eastern district of Texas, at the court-house in the city of Galveston, forthwith, to testify in behalf of plaintiffs in case pending in this court entitled Marcos Radich v. Hutchins & Wells, and not to depart the court without leave of the court.

Herein fail not.

Witness the honorable Amos Morrill, judge of the district court of the United States for the eastern district of Texas, and seal of said court, at the city of Galveston, this 28th day of January, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] C. DART,
Clerk Eastern District of Texas, at Galveston,
By GEO. C. REVES, *Dep.*

Marshal's return.

Rec'd this writ on the 28th day of Jan., 1873, and I executed the same forthwith by serving the within named witness.

WM. E. PARKER,
U. S. Marshal,
By W. T. CLAYTON, *Deputy.*

70 *Judgment on demurrer.*

From the minutes. Dec. term, 1872, Jan. 28th, 1873.

MARCOS RADICHE
v.
WILLIAM J. HUTCHINS & CLINTON G. WELLS. } No. 61. U. S. circuit court.

Be it remembered that on this 28th day of January, A. D. 1873, this cause regularly came on to be tried, wherein Marcos Radiche is plaintiff, and William J. Hutchins and Clinton G. Wells are defendants, when the parties appeared, by their attorneys, and announced themselves ready for trial; whereupon was heard and argued the demurrers of defendants to the petition of plaintiffs, and the same being fully understood by the court, and it appearing to the court that the law of the case is with the defendants, it is considered that the said demurrers be sustained; and thereupon, the plaintiff declining to amend, it is ordered and adjudged that the suit be dismissed, and that defendants go hence without day, and recover of the plaintiff their costs about their defence in this behalf sustained, to be taxed by the clerk.

Marshal's cost-bill.—(Filed Aug. 12th, 1873.)

MARCOS RADICHE
v.
HUTCHINS & WELLS. } No. 61. Marshal's costs.

71 13 witnesses served in Houston..... ..... 6 50
Service on Percy, Houston..... 50

Travel on writ—50 m., 6c	3 00
Service on Geo. Goldthwaite, Houston	50
Travel on writ—50 m., 6c	3 00
4 witnesses served in Galveston	2 00
Subp. for Geo. Goldthwaite, Houston	50
Travel on writ—50 m., 6c	3 00
Jan. 28, 1873, subp. A. Somerville, A. J. Walker, Peter Devoti & R. H. Percy, Galveston	2 00
	$21 00

Execution for costs.—(*Issd. Aug.* 12, '73.)

The United States circuit court, eastern district of Texas.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

Whereas William J. Hutchins and Clinton G. Wells, defendants, on the twenty-eighth day of January, A. D. one thousand eight hundred and seventy-three, at our circuit court of the United States in and for the eastern district of Texas, holding sessions at Galveston, recovered a judgment against Marcos Radiche, plaintiff, for costs of suit, in a certain between them, now taxed at and for the sum of sixty-five $\frac{65}{100}$ dollars, with interest thereon at the rate of per centum per annum, from the day of A. D. 186 , until paid, with cost, and which to the said defendants are now adjudged:

72

These are, therefore, to command you, that of the goods and chattels, lands and tenements of the said Marcos Radiche you cause to be made the full amount of said judgment and costs; together with all further legal fees and charges that may accrue by virtue of this writ.

Herein fail not, and due return make of this writ, certifying how you have executed the same.

Witness the honorable Nathan Clifford, senior justice of the Supreme Court of the United States, and the seal of the said circuit court of the United States for the eastern district of Texas, at Galveston, this the 12th day of August, in the year of our Lord eighteen hundred and seventy three, and of American Independence the ninety-eighth year.

[SEAL.] C. DART,
Clerk C. C. E. D. T., at Galveston.

MARCUS RADICHE
v.
W. J. HUTCHINS & C. G. WELLS. } Law. No. 61.

	Fil'g pet'n, 10c.; 2 copies do., cert's & seals 4.00	4 10
73	Iss'g 2 cit'ns, 2.00; alias, copy pet'n, cert. & seal, 2.00	4 00
	" alias cit'n, 1.00; ent'g ord's, 15c.; fil'g pp's, 30c	1 45
	Ent'g 2 ret's, 30c; ent'g cont. 15c	45
	" 2 cont. @ 15c	30
	" 5 " " "	75
	Fil'g 1 paper	10
	Taking testimony Wm. G. Hale	5 00
	2 subp's, 50c.; 2 seals to do. 40c	90
	Fil'g 1 paper	10
	Ent'g order	15
	Fil'g 5 subp's 50c.; ent'g 2 ret's, 30c	80

" 1 dep't'n 10c.; 1 cert. 15c		25
Ent'g cont		15
Fil'g 1 dep't'n, 10c.; 1 cert., 15c		25
4 subp's, 1.00; 4 seals to do., 80c		1 80
Fil'g paper		10
Ent'g judgment on demurrer		30
Docket & indexes		2 00
Fil'g 1 subpœ. 10c.; ent'g 1 ret. on do., 15c		25
		23 20
Iss'g execution 1.00; seal 20c	1 20	
Fil'g do. & ent'g ret	25	
		1 45
Attorneys' fee for defendants		20 00
Marshal's costs, Parker, 13 witnesses served in Houston	6 50	
Service on Percy, Houston	50	
Travel on writ, 50 miles	3 00	
Service on Geo. Goldthwaite, Houston	50	
Travel on writ	3 00	
4 witnesses served in Galveston	2 00	
Service on Geo. Goldthwaite, Houston	50	
Travel	3 00	
Service on 4 witnesses, Galveston	2 00	
		21 00
		$65 65

74 Foregoing execution endorsed: "Issued 12th Aug., 1873. Returnable to Dec. term, 1873."

NOTE.—No return or other endorsement on said writ.

Petition for writ of error.—(*Filed Oct. 6th*, 1874.)

In U. S. circuit court for the eastern district of Texas, at Galveston, Texas.

MARCOS RADICH
v.
W. J. HUTCHINS & C. G. WELLS.

To Hon. Amos Morrill, judge of dist. court for eastern dist. of Texas:

Your petitioner, Marcos Radich, plaintiff in above cause, respectfully represents that heretofore, to wit, on the 28th day of January, 1873, at the December term, 1872, of the U. S. circuit court in and for the eastern district of Texas, in the above-entitled cause, the following judgment was rendered and entered accordingly:

"Be it remembered that on the 28th day of January, A. D. 1873, this cause regularly came on to be tried, wherein Marcos Radich is plaintiff, and William J. Hutchins and Clinton G. Wells are defendant, when the parties appeared, by their attorneys, and announced themselves ready for trial; whereupon was heard and argued the de-
75 murrers of the defendants to the plaintiff's petition, and the same

being fully understood by the court, and it appearing to the court that the law of the case is with the defendants, it is considered that the said demurrers be sustained; and thereupon, the plaintiff declining to amend, it is ordered and adjudged that the suit be dismissed, and that defendants go hence without day, and recover of the plaintiff their costs about their defense in this behalf sustained, to be taxed by the clerk."

Petitioner represents that in the said proceedings in said cause there are manifest errors as appear of record, and in the rendition of said judgment, to his great damage.

Wherefore he prays your honor for a writ of error to the said United States circuit court, commanding the record and proceedings had in said cause in said circuit court to be sent up to the Supreme Court of the United States, so that the same may be had at Washington, on the second Monday in October next, in the said Supreme Court to be then and there held, that said record and proceedings may by said Supreme Court be inspected and said errors corrected; and, as in duty
76 bound, your petitioner will ever pray, &c.

MARCOS RADICH.

(Endorsement:) "Filed Oct. 6, '74. C. Dart, clerk."

Writ of error to Supreme Court U. S.—(Filed Oct. 6th, 1874.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the eastern district of Texas, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in the said circuit court before you, between Marcos Radich and William J. Hutchins and Clinton G. Wells, a manifest error hath happened, to the great damage of the said Marcos Radich, as by his complaint appears:

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly, and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the
77 Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday in October, 1875, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of said Supreme Court, the 24th day of September, in the year of our Lord one thousand eight hundred and seventy-four, and the seal of said circuit court, at Galveston.

[L. S.]

C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Approved and allowed by—

AMOS MORRILL,
Judge of the Eastern District of the State of Texas.

(Endorsement:) Received and filed Oct. 6th, 1874. C. Dart, clerk.

Bond for cost on writ of error.—(*Filed Oct. 6th*, 1874.)

In the circuit court of the United States for the fifth circuit and eastern district of Texas, sitting in and for said district, at Galveston.

MARCOS RADICH
v.
W. J. HUTCHINS & C. G. WELLS.

78 Know all men by these presents that we, Marcos Radich, as principal, and Pietro Devoti and A. Marson, as sureties, are held and firmly bound unto William J. Hutchins and Clinton G. Wells, in the sum of two hundred $\frac{00}{100}$ dollars, to be paid to the said William J. Hutchins and said Clinton G. Wells, their executors or administrators.

To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated at Galveston, State of Texas, on this the 24th day of September, anno Domini one thousand and eight hundred and seventy-four.

Whereas the above-named Marcos Radich hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the honorable circuit court of the United States for the eastern district of Texas:

Now, therefore, the condition of this obligation is such that if the above-named Marcos Radich shall prosecute his said writ of error
79 to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

MARCOS RADICH. [SEAL.]
P. DEVOTI. [SEAL.]
A. MARSON. [SEAL.]

Sealed and delivered in the presence of—
C. DART,
Clerk U. S. Circt. Court E. D. Texas, at Galveston,
By PHILIP ANDERSON,
Dept.

This day personally appeared before me, C. Dart, clerk of the circuit court in and for the eastern district of Texas, Pietro Devoti & A. Marson, to me known, and having been by me duly sworn, says that he is worth the sum of two hundred dollars over and above all exemptions, and that same is liable to execution.

Sept. 24, '74.

C. DART, *Clk.*,
By PHILIP ANDERSON, *Dept.*

Approved by—

AMOS MORRILL,
Dist. Judge of the East Dist. of Texas.

(Endorsement:) Received and filed Oct. 6th, 1874. C. Dart, clerk.

80 MARCOS RADICH
v.
W. J. HUTCHINS & C. G. WELLS. } No. 61.

UNITED STATES OF AMERICA, *ss:*

To William J. Hutchins, Houston, Texas, and Clinton G. Wells, Galveston, Texas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, wherein Marcos Radich is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this the 24 day of October,
81 in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] AMOS MORRILL,
Dist. Judge.

Marshal's return.

Received Oct. 25, 1874, and executed Oct. 26, 1874, by delivering to the within-named W. J. Hutchins in person a true copy of this writ, as certified by the clerk.

TOM P. OCHILTREE,
U. S. Marshal E. D. T.,
By JOHN CLEMON,
Dep'y.

Houston, Oct. 26, 1874.

And I further executed this writ on the 27th day of October, 1874, at Galveston, in my district, by delivering to Clinton G. Wells in person a true copy of this writ, as certified by the clerk.

TOM P. OCHILTREE,
U. S. Marshal E. D. T.,
By W. R. McFARLAND,
Dep'ty.

(Endorsement:) Returned & filed Oct. 27th, 1874. C. Dart, clerk U. S. circ't court E. D. T., G.

82 MARCOS RA'ICH
v.
W. J. HUTCHINS & C. G. WELLS. } No. 61.

UNITED STATES OF AMERICA, *ss:*

To William J. Hutchins, Houston, Texas, and Clinton G. Wells, Galveston, Texas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's

office of the circuit court of the United States for the eastern district of Texas, wherein Marcos Radich is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

83 Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this the 24 day of October, in the year of our Lord one thousand and eight hundred and seventy-four.

AMOS MERRILL,
Dist. Judge.

84 Received October 25th, 1874, and executed Oct. 26, 1874, by delivering to the within-named W. J. Hutchins in person a true copy of the writ as certified by the clerk.

Houston, Oct. 26, 1874.

TOM P. OCHILTREE,
U. S. Marshal E. D. T.,
By JOHN CLEMON,
Dep'y.

And I further executed this writ on the 27th day of October, 1874, at Galveston, in my district, by delivering to Clinton G. Wells in person a true copy of this writ as certified by the clerk.

TOM P. OCHILTREE,
U. S. Marshal E. D. T.,
By W. R. McFARLAND,
Dep'ty.

(Indorsed:) No. 61. Marcos Radich v. Hutchins & Wells. Citation in error. Returned & filed Oct. 27th, 1874. C. Dart, clerk U. S. circ't court E. D. T., G.

85 UNITED STATES OF AMERICA,
Eastern District of Texas:

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, do hereby certify the foregoing eighty-one (81) pages of writing to be a true copy of the record and of all proceedings in the cause lately pending in said court, numbered 61 on the law-docket thereof, entitled Marcos Radich v. William J. Hutchins and C. G. Wells, as the same now appear on file and of record in my office.

To certify which, witness my hand and seal of said court, at Galveston, this 27th day of October, A. D. 1874.

[SEAL.]

C. DART,
Clerk U. S. Circ't Court E. D. T., G.

(Indorsement on cover:) No. 265. Marcos Radich, plaintiff in error, vs. William J. Hutchins and Clinton G. Wells. E. Texas C. C. U. S. Filed 11th January, 1875.

REC. 265—3

Supreme Court of the United States.

October Term, 1876.

MARCOS RADICH,
PLAINTIFF IN ERROR,
vs.
W. G. HUTCHINS & C. G. WELLS.

No. 265.

Writ of Error to U. S. Circuit Court for Eastern District Texas.

Brief for Plaintiff in Error.

The plaintiff below, now plaintiff in error here, a foreigner residing in Houston, Texas, brought his action to recover damages against the defendants on the grounds following:

July 19, 1864, plaintiff was the owner of 450 bales cotton, worth $50,000, then actually in transit from Houston to Matamoras.

That then and previously the defendants, themselves Confederates, and running the rebel cotton office at Houston, combined with others, and prohibited the exportation of cotton from Texas, except on their written permits, and then only on condition that the person desiring to export said cotton beyond the limits of Texas should sell to said defendants and their confederates, representing the rebel cotton office aforesaid, an amount of cotton equal to that

for which the permit should issue, at a price, nominal and arbitrary, fixed by said office, pretending that such purchase was for the benefit of the so-called government of the Confederate States; or should sell and dispose of to said defendants and their confederates, representing said rebel cotton office, for the use and benefit aforesaid, one-half of the cotton the trader should desire to export, at the nominal and arbitrary price aforesaid.

That petitioner, desiring to protect his property and fearing to keep his cotton during the rebellion, lest it should be destroyed, and as he could only export it and thus save any part of it by submitting to the unjust, illegal, and forcible exactions of defendants; under the compulsion and duress of the defendants and their confederates petitioner was obliged to deliver up 225 bales, or pay the sum of $13,357.60 in specie or its equivalent, to his damage $40,000, for which he prays judgment.

See petition, Rec., pp. 1 and 2.

Both defendants regularly appear, and plead, demur, and answer at length.

Wells on Rec., p. 4 and pp. 9, 10, 11; Hutchins, Rec., p. 7.

The lower judge sustained the demurrer and dismissed the suit.

The grounds of demurrer are—

1st. The allegations of the petition show no legal or sufficient cause of action.

2d. The allegations are too general, vague, and indefinite.

3d. The allegations show that petitioner was endeavor-

ing to act, and did act, in violation of the laws and public policy of the United States.

4th. And that he was an enemy of the United States, giving aid and comfort to its enemies and the military authorities of the Confederate States.

ASSIGNMENT OF ERRORS.

First. The court erred in sustaining the demurrer and in dismissing the suit.

Second. The court erred in not hearing, trying, and deciding the whole case on the merits.

ARGUMENT.

If the court erred, as suggested in the first assignment of errors, the second assignment must be necessarily sustained. The demurrer, of course, goes to the facts properly pleaded in the declaration, admitting them, but denying the consequence of legal liability upon the defendants.

These objections of the demurrer pertain both to matters of form and substance of the petition. But we rely so confidently upon the form given to our allegations, and of our ability to recover upon them in the event of their being satisfactorily proved, that we declined the offer tendered to us to amend in the lower court. Hence, we submit, as to both the grounds of demurrer Nos. 1 and 2, that the allegations of petition are sufficient in law to entail liability upon the defendants. They make a clear case of trespass *vi et armis* on the plaintiff's property, and consequent damage. The remaining grounds of demurrer, Nos. 3 and 4, seem to us to raise the main question in the case. We state it in the following words: During the late rebellion, and on or about the 19th July, 1864, could an alien friend,

the *bona fide* owner of 450 bales cotton at Houston, Texas, set out to transport the said cotton from Houston, and out of the State of Texas to Mexico, without violating the laws and public policy of the United States; and, if not, can any one but the United States be heard to complain?

The President's proclamation of August 16, 1861, (12 S. L., 1262,) neither in language nor meaning embraces this case. The prohibition of commercial intercourse is between rebels and unionists, inhabitants of insurrectionary States and inhabitants of other States of the Union. This prohibition is the reiteration of that in act of July 13, 1861. (12 S. L., 257, sec. 5.) And by the act of July 2, 1864, (13 S. L., 375, sec. 4,) the prohibition is extended to all persons "not native or naturalized citizens" of the United States.

Cutner *vs.* United States, 17 Wall., 517.

We know of no statute or proclamation forbidding the purchase by neutrals of cotton in the insurrectionary States during the war, and the purchase of this cotton by Radich was in no wise in opposition to the statute laws, or the President's proclamations, or the laws of war.

It is perfectly clear that if Radich had accompanied his cotton to Matamoras, and there sold it or shipped it to his native country, no fault could be attributed to him by the United States, and no violation of international law.

The Santissima Trinidad, 7 Wheat., 340.

Nor can it be said truthfully that Radich voluntarily gave aid and comfort to the enemies of the United States. The defendants by force confiscated half of his cotton; to set aside the confiscation and get back his property he paid $\$13{,}357\frac{60}{100}$ in specie and goods at specie prices. This was

a mere continuation of the original force. Supposing that instead of taking half his cotton the defendants had imprisoned him until he made the delivery of it, or gave them its equivalent in specie and goods? Would the delivery of the cotton by Radich or his payment of the equivalent be a giving in aid and comfort of the enemies of the United States?

Radich's complaint is that the defendants, illegally and by force of arms, seized upon a moiety of the cotton, and coerced a sale thereof at a nominal and arbitrary price, and it is difficult to see, taking this to be true, as admitted, where the voluntary aid and comfort to the enemies of the United States exists in this case; still less if he was endeavoring to get his cotton out of Texas.

The United States *vs.* Guillem, 11 Howard, 47.

Radich was a neutral—a friend to both sides and an enemy to neither; thrown by accident or design into the midst of Texas, and there during the rebellion. Had he been a loyal citizen of the United States, choosing to continue his inhabitancy of Texas in spite of Davis' proclamation, the responsibility of the defendants for the damages inflicted upon plaintiff would seem to be clear, "unless "the actual exercise of its (the rebellion's) physical power, "brought to bear upon individuals, may constitute a jus- "tification or excuse for acts otherwise indefensible."

Sprott *vs.* U. S., 20 Wall., 465.

The rebellion could confer no legal right upon its military officers, the defendants, to damage Radich in the way they did. "The forms of law with which it clothed its "proceedings gave no protection to those who, assuming "to be its officers, were the instruments by which it acted."

Hickman *vs.* Jones, 9 Wall., 197.

But the quoted case answers the demurrer completely. The defendants there objected to the action on the ground that plaintiff could not recover damages from them, they being traitors, *because he was a traitor himself*. "Such a "justification would be a strange anomaly." How much stronger, then, is the case in favor of a neutral!

The settled policy of the United States was to make no distinction between a loyal citizen and friendly alien. This results from *the combined action of the three departments of the national Government.*

The Venice, 2 Wall., 258–276.

The question of public policy has nothing to do with the case. It would be absurd to say that plaintiff's attempt to protect his property was a violation of NATIONAL PUBLIC POLICY which excused the tort-feasors from all liability for their void and illegal acts.

We conclude the judgment of the circuit court should be reversed.

All of which is respectfully submitted.

JAMES H. EMBRY,
DURANT & HORNOR,
for Radich, Plaintiff in Error.

APRIL, 1877.

Supreme Court of United States.

MARCOS RADICH
vs.
W. I. HUTCHINGS,
CLINTON G. WELLS.

No. 38.

BRIEF OF P. PHILLIPS,

for Defendant in Error.

October 8, 1877.

R. O. Polkinhorn, pr.

Supreme Court of United States.

MARCOS RADICH
vs.
W. I. HUTCHINGS,
CLINTON G. WELLS.

No. 38.

BRIEF OF P. PHILLIPS,

for Defendant in Error.

The plaintiff below claimed the right to recover from the defendant the sum of $13,357.60.

The grounds for this recovery, as stated in his petition, are, that in July, 1864, he was the owner at Houston, Texas, of 450 bales of cotton, of the value of $50,000, which he designed to send by wagons into Mexico.

That Hutchins, one of the defendants, claiming to be a colonel in the Confederate States Army, and to be chief of the cotton office at Houston, without any authority of law, had, by public notice, prohibited the exportation of cotton, except upon written permits from his office, and then upon condition only, that the party desiring to export the same, should sell to those representing said cotton office, an amount of cotton equal to that for which the permit should be given, at a price to be fixed by said office, pretending that such purchase was for the benefit of the Confederate Government.

That desirous to export his cotton, and knowing that if he should attempt to pass the frontier of Texas into Mexico "that the armed force of the insurgents, provided and at hand to carry out the illegal exactions of the defendants, would capture and confiscate the same; under compulsion of circumstances, aforesaid," he delivered to the defendants two hundred and twenty-five bales, being a moiety at an arbitrary price fixed by them, as "the consideration for the permit to export across the line of Texas into Mexico"—the other moiety.

The petition then avers, that when he delivered the 225 bales of cotton to the defendants it was upon a "*condition insisted upon by your petitioner*," that he was to have "the privilege" of redeeming the same, with the right to export, by the payment of such sum as "the defendants might demand therefor."

This agreement, it appears, was exactly fulfilled, as the petitioner goes on to aver, that in pursuance thereof he paid to the defendants in "specie, and in goods, wares and merchandise at specie values," the said sum of $13,357.60 in redemption of said cotton and for permit to export the same.

Notwithstanding this distinct averment that the money and merchandise were paid and delivered, by virtue of an agreement "insisted upon by the petitioner," and notwithstanding he has received the fruits of that agreement, to wit, the return of the cotton with permit to export the same, the petition concludes with the allegation, that the "said sum" was an illegal exaction, and was submitted to "because of the armed force to support and enforce the same," wherefore he says he is injured, &c. (pp. 1, 2.)

A demurrer to this petition was sustained by the Court, and, the plaintiff declining to amend, there was judgment dismissing the suit. (p. 27.)

In the consideration of this case we may eliminate the averment that the plaintiff is a "subject of the Emperor of Russia." He was a resident of Texas in 1864, and still claims to be a resident. Trading in said State, and engaged in commerce between that State and Mexico, during the late civil war, he is to be treated, so far as his business engagements are concerned in his relation to the United States, as though he were a citizen of the State. All who lived during that war on one side of a well defined line were enemies to those who lived on the other.

The secession of the States has been repeatedly held, in no wise absolved their citizens from the allegiance due by them to the United States, and a foreigner residing in those States owed the same allegiance and obedience to its laws as a duty imposed upon him, by the mere fact of his residence, and that temporary protection which he enjoys, and in as much bound to obey its laws as native subjects or citizens. This is the universal understanding in all civilized States, and no where a more established doctrine than in this country.

Carlisle vs. *U. S.*, 16 Wall., 155.

Further, this Court has several times decided that persons residing in the rebel States at any time during the civil war must be considered as enemies during such residence, and this *without regard to their personal sentiments or dispositions.*

Very early in the war, it was the declared policy of this government to cut off the Confederates from all resources to be derived either from intercourse with the loyal States, or with foreign governments. Hence, the laws and proclamations as to non intercourse and blockade.

The seceding States, thus compelled to rely wholly

upon their internal resources, looked to cotton as their chief means for carrying on the struggle. All manufacturing countries were eager to obtain, and pay for it exorbitant prices.

While on the one hand this government used its power to prevent the confederacy from thus supplying their wants, the States determined to utilize this resource, and to accomplish this, the Confederate Congress on 6 February, 1864, passed an act entitled, "an act to impose regulations upon the foreign commerce of the Confederate States, to provide for the public defence."

It provides that the exportation of cotton, tobacco, &c., from the Confederate States, and from all places in the occupation of their troops is prohibited, except under such uniform regulations as shall be made by the President of the Confederate States.

Sec. 2. That if any person shall put a load on board of any ship or other water craft, or into any wagon, cart, &c., for conveyance or transportation beyond the Confederate States, &c., any of the articles mentioned in the first section, or shall collect the same for the purpose of being conveyed or transported contrary to the prohibition aforesaid, the said articles and the ship, water craft, wagon, &c., employed therein shall be forfeited, and all persons concerned in the enterprise on connection shall be deemed to be guilty of a high misdemeanor and punishable by such fine and imprisonment as the Court may impose.

Sec. 3. Provides for the granting of a permit by an officer of the confederacy under such regulations as shall be prescribed by the President.

Sec. 5. Provides for a judicial enquiry into the action of such officer on the complaint of any person who avers that he has been aggrieved by such action.

First Cong., Sess. 4, ch. 24, 1864, p. 181.

It was under this law that the notice referred to in the petition was published by Hutchins, claiming in the

language of the petition to be "Lieutenant Colonel, and chief of the cotton office at the city of Houston."

This notice is described as "prohibiting the exportation of cotton from the State of Texas, except upon written permits issued from his office.

It is not averred in the petition, that Hutchins' claim to the office of Lieutenant Colonel and chief of the cotton office *was false*.

Here, then, is an official giving a public notice in reference to a great public interest—and here is a law regulating that public interest. Is it not a reasonable and legal presumption that the officer was acting in the proper discharge of his duties under that law?

The petitioner avers that he was the owner of 450 bales of cotton, which was then "actually in transit on its way to the city of Matamoras in the Republic of Mexico"

The transactions set forth in the petition are alleged to have been made under compulsion.

This pretended duress consisted in the public advertisement and the presence of a body of Confederate troops.

That there was no duress, and that trading with Mexico was illegal as against this Government, is satisfactorily demonstrated in the brief of my colleague, Mr. BALLINGER.

I desire, however, to add this proposition: That these parties, in 1864, were, by their voluntary residence in Texas, responsible for the laws of the government to which they attached themselves.

During the war the relation of all these parties to the Federal Government was that of enemies, but in relation to each other they were citizens of a common government, to which they owed obedience.

It therefore does not lie in the mouth of one of these citizens now to claim that this transaction was consumated under an *illegal act*, and that the notice published by the defendant "was *without authority or warrant of law.*"

While a Federal court would not lend its aid to enforce a contract or give effect to a law intended to aid the rebellion, it will refuse to open a transaction consummated under a law which in no wise militates against the authority of the United States, when both parties to such transaction were citizens or residents of the Confederate States.

Since writing the foregoing we have seen the brief filed by the plaintiff in error, in which the case of *Hickman* vs. *Jones* is cited as "completely answering the demurrer."

Throughout this brief the plaintiff is described sometimes as a "NEUTRAL," on others as a "FRIENDLY ALIEN," and then as "A FRIEND TO BOTH SIDES and an enemy to neither, thrown by *accident* OR *design* into the midst of Texas, and there during the rebellion." (p. 5.)

If the personal status of the plaintiff is to be regarded as having an important bearing on the question at issue, it was due to the court, as well as to the case, that it should have been correctly stated.

There is not a word in the plaintiff's petition which justifies this description, nor is there anything to be found in the evidence exhibited in the record which gives the least countenance to it.

On the contrary, if it were proper to refer to this evidence, we should find from HALE's deposition that the

plaintiff resided in Texas long before the war; that he had a house at Brownsville, and was a general trader and speculator. The witness adds: "He did not engage in the business of exporting cotton to Mexico from Texas until after the commencement of the late war, and witness does not know of his own knowledge that he ever exported any cotton from Texas." (p. 14.)

WOLF testifies that he offered for sale "Confederate permits to export cotton." He says: "He offered some to me in 1864, and sold some to Bruno Lasana and Lorenzo Galvan in the latter part of 1864 or in the early part of 1865." (p. 21.)

Villeneuve deposes that he has known the plaintiff since 1858 or 1859; that he was "trading Mexican sheep and goods for cotton during said years, and to the close of the war." (p. 24.)

It is thus evident that the author of the brief is indebted wholly to his imagination for his description of the plaintiff as a "neutral" or a "friendly alien."

The decision in the case of Hickman (so much relied on) held the parties responsible who had arrested and imprisoned him as a traitor, because of his aid to the forces of the United States in a hostile enterprise against the Confederate States.

In the court below the right of the plaintiff to recover damages was, by the charge of the judge, made to depend on the fact whether he had voluntarily acted with the confederates prior and subsequent to the aid given to the United States troops.

This charge was held to be erroneous, as the plaintiff's "past or subsequent complicity with those engaged in the rebellion might affect his character, but could not take away his legal rights."

We have no need to controvert this decision as applied to the facts before the court.

But we respectfully submit, that the opinion contains doctrine in opposition to other decisions of this court, and contrary to well established principles of internanational law.

For instance, it is said that the rebellion in the eye of the law "had the same properties as if it had been the insurrection of a county against the State to which it belonged."

Contrast this with the opinion in the case of *Mauran* vs. *Ins. Company*, 6 Wallace, 13, in which the court say, the "question is not whether the Confederate Government was a lawful government, but whether or not it was a *government in fact*—that is, one in the possession of *supreme power* of the district of country over which its jurisdiction extended?"

And further, this government, though erected by unlawful means, was "greater in territory than many of the old governments in Europe, complete in the organization of all its parts, containing within its limits more than eleven millions of people, and of sufficient resources in men and money to carry on a civil war of unexampled dimensions."

And so in the Prize cases, the court holds with Vattell, "a civil war breaks the bands of society and government, or at least suspends their force and effect. It produces in the nation *two independent parties*, who consider each other as enemies, and acknowledge no common judge. Those two parties, therefore, must necessarily be considered as constituting two *separate bodies—two distinct societies*. Having no common superior to judge between them, they stand in precisely the same predicament as two nations who engage in a contest and have recourse to arms. 3 Bl., 667.

Again, in Hickman's case, it is said the "act of the Confederate Congress creating the district court was void. It was as if it were not, The court was a nullity and could exercise *no rightful jurisdiction.*"

That this Court could exercise no jurisdiction to punish a citizen for loyalty to the United States we agree. But why should it be held to have no jurisdiction for the purpose of preserving the order of society and enforcing the laws of property?

Suppose an alien resident in Alabama had sued Hickman on his promissory note in this District Court, had recovered judgment, under which his plantation had been sold to Jones. After the war, Hickman, now a citizen of Tennessee, brings his action of ejectment in the District Court of the United States for Alabama to recover this property. The judgment of the Confederate Court, and the sale thereunder, are held to convey to the defendant a good title. Hickman then brings the case here for review. On what principle of ethics or of law should such a judgment be reversed, on the ground that the District Court of the Confederacy had no jurisdiction?

Was it not to the interest of the United States that during the struggle the peace of society should be preserved, so that when the true sovereign is restored to his rights he should find in the land, over which his dominion extends, harmony, instead of chaos?

The Court has fully applied the rule by which the acts of the States and the judgment of their Courts are recognized as of full force and effect, in all matters which do not trench upon the rights and prerogatives of the general Government, and the protection they afford to loyal citizens; and we do not appreciate the reasoning which would apply a different rule to the acts of the

Confederate Congress and the jurisdiction of Courts organized by it.

There is a want of harmony in the decisions which relate to the civil war, that is pain[illegible] whose duty it is to investigate them. A great [illegible]. "The flames of discord and civil war [illegible] to the proceedings of pure and sacred justice: more quiet times are to be waited for."

Those times have now happily arrived, and we submit that the late Confederate Government should be recognized to have been a *de facto Government* in the largest sense of the term; and that its laws and judicial proceedings (subject to the same exceptions as are now applied to the laws and judicial proceedings of the States,) should find recognition in the Federal judiciary.

It has already been decided that the Confederate Government could be a party to contracts, and that this government may maintain suits claiming property as its successor.

Why should not this recognition be extended and peace be preserved by holding that, between its citizens, transactions which have been consummated under its laws not affecting the authority of the United States, cannot again be litigated in the Courts of the United States?

P. PHILLIPS,
for Defendant in Error.